IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1096 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ALEXANDER BOSNJAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1096 of 2002

MR SAURIN A SHAH for Petitioner No. 1

Mr V M Pancholi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/04/2002

ORAL JUDGEMENT

Rule. Mr V M Pancholi, learned APP waives service of notice of rule on behalf of respondent State of Gujarat. By consent of the learned Advocates for the parties, this

matter is being heard and disposed of finally.

2. It appears from the FIR at page 31 that the present petitioner was driving a two wheeler bearing No. GJ-1-B 6850 near Thaltej cross roads on 1.1.2002 at 2 a.m. The deceased was the pillion rider of the said scooter. It is stated in the FIR that another vehicle was coming from the opposite direction with full light and, therefore, the petitioner was frightened and out of fear he applied brake. With the result, the vehicle turtled on the road and on account of the said accident, the petitioner suffered injury on his forehead as well as on other parts of the body. It is also stated in the FIR that the deceased sitting behind sustained grievous hurt and ultimately succumb to the injuries on the spot. Therefore, the petitioner being driver of the said scooter, filed the said FIR which was registered before Satellite Police Station as C.R. No.2/2002. The petitioner has applied for quashing the said FIR by filing this application invoking powers under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). During the course of hearing, it transpired that the concerned Investigating Officer has thoroughly investigated the case but apart from the statement of the petitioner said to have been made in the FIR referred to hereinabove, no other material has been collected as no witness was present on the spot. Mr V M Pancholi, learned APP states that looking to the FIR and the panchnama of the scene of offence, it clearly transpires that there is nothing to allege that the petitioner was driving the vehicle rashly or negligently. In other words, there is no material to show that the petitioner had driven the vehicle at the relevant point of time rashly and negligently. It, therefore, cannot be said that the deceased died on account of the injuries suffered by him on account of the rash or negligent driving on the part of the petitioner. Mr V M Pancholi, learned APP also states that in above view of the matter, no offence has been made out after thorough investigation into the matter. Therefore, there is no alternative but to either pass an order for quashing the FIR or to submit a report to the concerned Magistrate under section 169 of the Code. In above view of the matter, when no offence has been made out even after the thorough investigation, this is a fit case wherein the application should be allowed and the FIR registered as aforesaid be quashed and set aside.

3. For the foregoing reasons, this application is allowed. The FIR registered as CR.No.5/2002 before Satellite police station, Ahmedabad for offence

punishable under section 297, 337 and 304-A of IPC read with sections 117 and 184 of the Motor Vehicles Act, 1988 is ordered to be quashed and set aside. Rule is made absolute accordingly. The learned APP also states that the I.O. is present with the original papers and that he (learned APP) has perused the said papers before arguing the matter. The above observations will naturally not prejudicially affect the right of the legal representatiaves of the deceased since the matter is being disposed of in their absence. D.S. permitted.

2.4.2002 [D P Buch, J.]
msp